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Attorneys for Federal Defendant
United States Postal Service

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LYDIA PACHECO,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

No.

07 3988

NOTICE OF REMOVAL

TO: Clerk, Superior Court of California
County of Alameda
Small Claims Court
Hayward Hall of Justice
24405 Amador Street
Hayward, California 94544

Lydia Pacheco
15722 Via Represa
San Lorenzo, California 94580

PLEASE TAKE NOTICE that on this day Case No. HS07332366 pending in the Alameda County Small Claims Court is being removed to the United States District Court for the Northern District of California pursuant to 39 U.S.C. § 409(a), 28 U.S.C. §§ 1339, 1441(a), 1441(b), and 1442(a)(1) on behalf of federal defendant United States Postal Service. Upon direction by the Attorney General of the United States, the undersigned attorneys hereby present

1 the following facts to the Judges of the United States District Court for the Northern District of
2 California.

3 1. On June 22, 2007 plaintiff filed a small claims action against the United States Postal
4 Service in the Alameda County Superior Court seeking \$7,500.00 in damages. This is a lost mail
5 complaint.

6 2. On or about June 26, 2007, the Post Office in San Lorenzo, California received a copy
7 of the Plaintiff's Claim and Order to Defendant (small claims complaint). The United States
8 Attorney's Office has not yet been served as required by Rule 4, Fed.R.Civ.Proc. A copy of the
9 Plaintiff's Claim and Order to Defendant is attached as Exhibit A pursuant to 28 U.S.C.
10 § 1446(a), which constitutes the only process, pleading, or order which has been received. Trial
11 is scheduled for August 10, 2007 at 9:00 a.m. in small claims court which should be vacated
12 upon the filing of this notice.

13 3. This action must be removed to federal district court because it is a tort action against
14 the Postal Service, an agency of the United States. This action must also be removed to federal
15 district court because it involves a federal question. Original jurisdiction lies in a federal forum
16 under 28 U.S.C. § 1331 (civil actions arising under the Constitution, laws or treaties of the
17 United States), under 28 U.S.C. § 1339 (civil actions relating to the postal service), and other
18 applicable authorities, including, but not limited to, the Federal Tort Claims Act, 28 U.S.C.
19 §§ 1346, 2671, et seq., and 39 U.S.C. § 409(c).

20 4. A copy of this Notice is being filed with the Clerk of the Alameda County Small
21 Claims Court That filing will automatically effect the removal of the action described above, in
22 its entirety to this Court for all future proceedings pursuant to 28 U.S.C. § 1446(d).

23 Respectfully submitted,

24 SCOTT N. SCHOOLS
25 United States Attorney

26 DATED: August 2, 2007

27 By: Melanie L. Proctor
28 MELANIE L. PROCTOR
Assistant United States Attorney

EXHIBIT A

SC-100**Plaintiff's Claim and ORDER
to Go to Small Claims Court****Notice to the person being sued:**

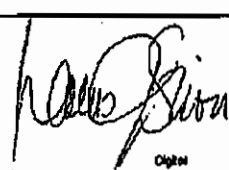
- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court**The people in ① and ② must go to court on:** (Clerk fills out section below)

Trial Date	Date	Time	Department	Name and address of court if different from above
1.	08/10/2007	09:00 AM	504	24405 Amador Street, Hayward
2.				
3.				

Date: **06/22/2007** Clerk by,  , Deputy

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of Alameda
Hayward Hall of Justice
24405 Amador Street
Hayward, CA 94544

Clerk fills in case number and case name:

Case Number:
HS07332366
Case Name:
Pacheco VS USPS

Instructions for the person suing:

- You are the Plaintiff. The person you are suing is the Defendant.
- Before you fill out this form, read Form SC-150, *Information for the Plaintiff (Small Claims)*, to know your rights. Get SC-150 at any courthouse or county law library, or go to: www.courtinfo.ca.gov/forms
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Plaintiff (list names): Lydia PachecoCase Number:
HS07332366**① The Plaintiff (the person, business, or public entity that is suing) is:**Name: Lydia PachecoPhone: (510) 750-5789Street address: 15722 Via RepresaSan LorenzoCA94580StreetCityStateZip

Mailing address (if different):

StreetCityStateZip

If more than one Plaintiff, list next Plaintiff here:

Name: _____

Phone: _____

Street address: _____

StreetCityStateZip

Mailing address (if different):

StreetCityStateZip☐ Check here if more than 2 Plaintiffs and attach Form SC-100A.☐ Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.**② The Defendant (the person, business, or public entity that is being sued) is:**Name: USPSPhone: (415) 764-3600Street address: Postmaste - Richard Martineze 1588 HesperianSan LorenzoCA94580BlvdStreetCityStateZip

Mailing address (if different):

StreetCityStateZip

If more than one Defendant, list next Defendant here:

Name: _____

Phone: _____

Street address: _____

StreetCityStateZip

Mailing address (if different):

StreetCityStateZip☐ Check here if more than 2 Defendants and attach Form SC-100A.☐ Check here if any Defendant is on active military duty, and write his or her name here: _____**③ The Plaintiff claims the Defendant owes \$ 7,500.00. (Explain below):**a. Why does the Defendant owe the Plaintiff money? Lost mail for 8 months made us default on taxes in Marion, FL resulting in out of pocket expence.b. When did this happen? (Date): 9-29-07 + 5-18-07

If no specific date, give the time period: Date started: _____ Through: _____

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.) Moneys we had to borrow☐ Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.

Plaintiff (list names): Lydia Pacheco

Case Number:
HS07332366

- ④ You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue.

Have you done this? ☒ Yes ☐ No

If no explain why not:

- ⑤ Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. ☒ (1) Where the Defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.
- (2) Where the Plaintiff's property was damaged.
- (3) Where the Plaintiff was injured.
- b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b))
- c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civil Code, § 1812.10)
- d. ☐ Where the buyer signed the contract, lives now, or lived, when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civil Code, § 2984.4)
- e. ☐ Other (specify):

- ⑥ List the zip code of the place checked in ⑤ above (if you know): 94580

- ⑦ Is your claim about an attorney-client fee dispute? ☐ Yes ☒ No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form and check here: ☐

- ⑧ Are you suing a public entity? ☒ Yes ☐ No

If yes, you must file a written claim with the entity first. ☒ A claim was filed on (date): 06/01/2007

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- ⑨ Have you filed more than 12 other small claims within the last 12 months in California?

☐ Yes ☒ No If yes, the filing fee for this case will be higher.

- ⑩ I understand that by filing a claim in small claims court, I have no right to appeal this claim.

- ⑪ I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 06/22/2007

Lydia Pacheco

Plaintiff types or prints name here

Signature on File

Plaintiff signs here

Date:

Second Plaintiff types or prints name here

Second Plaintiff signs here

**Requests for Accommodations**

Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the trial. Contact the clerk's office for Form MC-410 Request for Accommodations by Persons With Disabilities and Order. (Civil Code, § 54.8)

SC-100**Information for the Defendant (the person being sued)**

"Small claims court" is a special court where claims for \$5,000 or less are decided. A "natural person" (not a business or public entity) may claim up to \$7,500. The process is quick and cheap. The rules are simple and informal.

You are the Defendant—the person being sued. The person who is suing you is the Plaintiff.

Do I need a lawyer?

You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court?

You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and any evidence that supports your case. And read "Get Ready for Court" at: www.courtinfo.ca.gov/selfhelp/smallclaims/getready.htm

What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don't speak English well?

Ask the clerk if the court can give you an interpreter for free. If not, bring someone—like an adult relative or friend—who can interpret for you in court. It is best if your interpreter is not a witness or listed in this case. Or ask the clerk for a list of interpreters. (Interpreters usually charge a fee.)

Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at: www.courtinfo.ca.gov/forms

What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case?

If you lose, you can appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge's decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see:

www.courtinfo.ca.gov/selfhelp/smallclaims/appeal.htm

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, you must both notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial, explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done this.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107 and the clerk will subpoena (order) them to go.
- **Sue the person who sued you.** File Form SC-120, *Defendant's Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-110 (or write a letter) and mail it to the court and to all other people listed on your papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.

**Need help?**

Your county's Small Claims Advisor can help for free.

For Legal Advice, call (510) 268-7665.

For Drop-In Clinic hours, call (510) 268-7221.

Or go to "County-Specific Court Information" at: www.courtinfo.ca.gov/selfhelp/smallclaims

SC-100**Información para el demandado (la persona demandada)**

La "Corte de reclamos menores" es una corte especial donde se deciden casos por \$5,000 ó menos. Una "persona natural" (que no sea un negocio ni una entidad pública) puede reclamar hasta \$7,500. El proceso es rápido y barato. Las reglas son sencillas e informales.

Usted es el Demandado — la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado?

Puede hablar con un abogado antes o después del caso. Pero no puede tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación) de un caso de reclamos menores.

¿Cómo me preparo para ir a la corte?

No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos, y cualquier pruebas que apoyan su caso. Y lea "Prepárese para la corte" en:

www.courtinfo.ca.gov/selfhelp/espanol/reclamosmenores/prepararse.htm

¿Qué hago si necesito una adaptación?

Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, *Request for Accommodations*. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo bien inglés?

Pregúntele al secretario si la corte le puede dar un intérprete sin costo. Si no, lleve consigo a alguien — ya sea un pariente adulto o amigo — que pueda servirle de intérprete en la corte. O pide del secretario una lista de intérpretes. Es mejor que su intérprete no sea un testigo ni una persona que figure en este caso. (Los intérpretes en general cobran un honorario.)

¿Dónde puedo obtener los formularios de la corte que necesito?

Vaya a cualquier edificio de la corte, la biblioteca legal de su condado o imprima los formularios en: www.courtinfo.ca.gov/forms

¿Qué pasa en el juicio?

El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso?

Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación*. Tiene que presentarlo dentro de 30 días después de la decisión del juez.
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración para pedirle al juez que anule el fallo* (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea: www.courtinfo.ca.gov/selfhelp/espanol/reclamosmenores/apelar.htm

¿Tengo otras opciones?

Sí. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en resolver el caso, ambos tienen que notificar a la corte. Pídale al Asesor de Reclamos Menores que lo ayude.
- **Probar que es la corte equivocada.** Envíe una carta a la corte antes del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Para asegurarse que los testigos vayan al juicio, llene el formulario SC-107 y el secretario emitirá una orden de comparecencia ordenándoles que se presenten.
- **Demandar a la persona que lo demandó.** Presente el formulario SC-120, *Reclamo del demandado*. Hay fechas límite estrictas que debe seguir.
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo?

Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio), o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado), o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-110 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.

**¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.**

Para consejo legal, llamar al teléfono (510) 268-7665.

Para horas de la "Drop-in Clinic" (Clínica sin cita), llamar al teléfono (510) 268-7221.

Vea "Información por condado" en:

www.courtinfo.ca.gov/selfhelp/espanol/reclamosmenores

SHORT TITLE: Pacheco VS USPS	CASE NUMBER: HS07332366
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ADDITIONAL ADDRESSEES

Lydia Pacheco
15722 Via Represa
San Lorenzo, CA 94580-____
(510) 750-5789

USPS
Postmaste - Richard Martineze
1588 Hesperian Blvd
San Lorenzo, CA 94580-____
(415) 764-3600